LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 27 1937
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1936

No. ~~1432~~ 901

HARVEY R. BITTER,

Petitioner,

- versus -

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RAY T. MCCANN,
RICHARD A. MCDERMOTT
152 W. Wisconsin Ave.
Milwaukee, Wisconsin.
Counsel for Petitioner

HAMMERSMITH-KORTMEYER CO. MILWAUKEE

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Question Presented	2
Constitutional Provisions and Statute and Rule Involved	2
Statement of the Case	4
Reasons for Granting the Writ	8
I.	
Petitioner was deprived of the Assistance of Counsel	8
II.	
The summary punishment of petitioner constituted a deprivation of his liberty without due process of law	12
Conclusion	17
Appendix	19
Opinion of the Court Below	19
Order denying petition for rehearing	32
Order staying mandate	33

CITATIONS

Cases:

Crooker v. State of California (1958) 357 U.S. 433, 439, 78 S.Ct. 1287, 2 L. Ed. 2d 1448 11

Page

Glasser v. United States (1942) 315 U.S. 60, 62 S. Ct. 457, 86 L. Ed. 680 ..... 9, 10, 12

Lisenba v. People (1941) 314 U.S. 219, 236, 62 S. Ct. 280, 86 L. Ed. 166 11

In Re Murchison (1955) 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 15

In Re Oliver (1948) 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 16

Powell v. Alablama (1932) 287 U.S. 45, 69, 53 S. Ct. 55, 77 L. Ed. 158 11

Sacher v. United States 343 U.S. 1, 72 S. Ct. 451, 96 L. Ed. 717 (1952) 14

Widger v. United States (C.A. La. 1957) 244 F. 2d 103 14

United States v. Venuto, 182 F. 2d 519 (C.A. 3d Cir. 1950) 8

Constitutional Provisions:

Amendments to the United States Constitution:

Article V 2

Article VI 3

Statutes:

18 U.S.C. §401 ..... 3, 12

28 U.S.C. §1254(1) 2

Rule:

18 U.S.C. Rules of Criminal Procedure — Rule 42 ..... 3, 13

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. -

HARVEY R. BITTER,

Petitioner,

- versus -

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINION BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit will be reported unofficially at 374 F. 2d 744 (May 22, 1967 Advance Report). The Opinion is printed and appended to this Petition pursuant to Rule 23 (1) (i) together with the Order on Rehearing.

Harvey R. Bitter, the petitioner herein, respectfully petitions for and prays that a writ of certiorari issue to review the final Judgment of the United States Court of Appeals for the Seventh Circuit, entered on the 6th

day of February, 1967, which affirmed the Judgment of the United States District Court for the Eastern District of Wisconsin. On April 20, 1967 an order was entered denying the petition for rehearing.

JURISDICTION

Petitioner believes that 28 U.S. C. § 1254 (1) confers jurisdiction on this Court to review the judgment of the Court below by writ of certiorari.

QUESTION PRESENTED

Where in mid-trial during presentation of the defense, without precedent or authority, and contrary to Rule 42 (a) of the Rules of Criminal Procedure, the trial judge summarily placed defendant in custody, and defendant at the day's adjournment was removed to and incarcerated in a jail about forty miles from the place of trial, unknown to his attorney, and defendant was kept in custody throughout the balance of the trial, was defendant deprived of his Right to Counsel and denied Due Process in violation of Articles V and VI of the Amendments to the United States Constitution?

CONSTITUTIONAL PROVISIONS AND STATUTE AND RULE INVOLVED

AMENDMENTS TO THE UNITED STATES CONSTITUTION:

ARTICLE V

"No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *"

ARTICLE VI

"In all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defence."

18 U.S.C. § 401

(Title 18, U.S.C.A., Crimes and Criminal Procedure, § 401, p. 501)

"§ 401. Power of court

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as —

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command. June 25, 1948, c. 645, 62 Stat. 701.".

18 U.S. C. Rules of Criminal Procedure

(Title 18, U.S.C.A., Rule 42, p. 29)

"Rule 42. Criminal Contempt

(a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The

notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or crititism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment."

STATEMENT OF THE CASE

The trial of the petitioner in the United States District Court for the Eastern District of Wisconsin upon an indictment charging in eighteen counts violations of Section 1341, Title 18, U.S.C. (Mail Fraud) and in a nineteenth count a violation of Section 1342, Title 18, U.S.C. (use of an assumed name) commenced before the trial court on waiver of a jury trial on Monday, August 23, 1965. It was indicated by the United States Attorney that most if not all of Wednesday would be consumed by the government's case; but early on Wednesday afternoon, August 25, 1965, midway through the trial, the government rested unexpectedly. Petitioner's counsel had been prepared to proceed at some length; but because of the statements by the government's attorneys petitioner's counsel had not completed preparation for a full half day's testimony with supporting documentary evidence.

At recess time, about 3:00 P.M., a request was made of the trial court by petitioner's counsel that petitioner be permitted to go to his office to obtain additional documentary evidence. Permission was granted to petitioner's counsel without the presence of petitioner; and the trial judge set 3:45 P.M. as the time for re-convening. No order or direction was given by the Court to petitioner directly; and the permission was communicated to petitioner by his counsel. Nothing further was said.

Petitioner, who had attended every session of the court promptly, was delayed in returning some thirty-seven minutes. Upon his return, without permitting any explanation, the trial judge ordered petitioner into custody to be so kept throughout the balance of the trial. (App. 349).

Petitioner and his counsel had been advised that petitioner would be confined at the Waukesha County jail, some eighteen miles from the Federal Building in Milwaukee where the court was located. Instead the Marshal took petitioner to the Kenosha County jail some forty miles distant (App. 451). The Marshal made no attempt to contact petitioner's counsel from the time petitioner was taken from the court room on Wednesday afternoon until the trial was about to reconvene (App. 361,453).

An effort was made at the close of court on Wednesday to have petitioner released (App. 359), but the trial judge was adamant; and the petitioner remained in custody for the remainder of the trial. This incarceration effectively terminated any opportunity for effective and continuing consultation and preparation throughout the balance of the trial. There had been no testimony introduced by the Government in respect to five of the counts of the Indictment until Wednesday morning; and there were extensive records, particularly those relating to advertising of the

businesses referred to in all of the counts upon which petitioner was found guilty, which required his personal presence at his office and the office of his attorney. Petitioner had no way of knowing in advance of the trial what specific claims would be asserted by the complainants. In particular, it could not be assumed that there would be denials of matters such as notification of prospects, communication of inquiries, and repeated advertisements. Consultation at the conclusion of each day's testimony, overnight preparation, and early morning consultation prior to the resumption of the trial were compelled by the nature of the charges and the multiplicity of details associated with petitioner's business as it related to each count.

The motion of petitioner's counsel for a mistrial made at the opening of court on Thursday, August 26, 1967 was denied summarily (App. 360). A motion for a new trial was made at the conclusion of the trial upon the ground that petitioner was deprived of the right to counsel and an opportunity to continue to prepare his defense throughout the course of the trial (App. 483). That motion was denied. This was followed by a written motion for new trial upon the ground, among others (App. 568):

* * *

"e. In the interest of justice by reason, among others, of defendant having been deprived of the opportunity to properly and adequately present testimony and evidence, to adequately prepare his defense, and to freely consult with and obtain the advice of his attorney and to continue the preparation of his defense in the light of such conferences and consultation as the result of which defendant was prejudiced critically and substantially and deprived of a fair trial."

The affidavit of petitioner accompanied the written motion (App. 568-577). The written motion was denied (App. 581).

The judgment of the trial court was appealed to the court below; and the Court of Appeals handed down its Opinion (copy appended) on February 6, 1967 affirming the judgment of the District Court, to which Opinion and judgment Judge Elmer J. Schnackenberg, one of the three judge division before whom the case was heard, dissented. A petition for rehearing in the court below was denied under date of April 20, 1967 (copy of decision appended). Judge Elmer J. Schneckenberg voted to grant the petition for rehearing.

On April 24, 1967 the Clerk of the United States Court of Appeals for the Seventh Circuit was requested by letter to prepare the Supreme Court Record in preparation for the filing of a petition for writ of certiorari. A motion for stay of the mandate was prepared and filed; and a stay of thirty days to June 1, 1967 was granted under date of May 2, 1967 (copy of order appended).

The written request for the Supreme Court Record was mislaid in the office of the Clerk; and the Record was not certified until May 19, 1967. The Record was received by petitioner's counsel by ordinary mail delivery at Milwaukee, Wisconsin on May 22, 1967, accompanied by three additional copies of the printed appendix. Six additional copies of the printed appendix were received by similar delivery on May 23, 1967.

REASONS FOR GRANTING THE WRIT

I

RIGHT TO COUNSEL

The right "to have the Assistance of Counsel" in the defense of a criminal prosecution is one of the "great rights" preserved and protected by the unassailable command of Article VI of the Bill of Rights. Petitioner rests his prayer for review first (under Rule 19 (b)) upon the belief that the court of appeals in its divided determination herein sanctioned such a departure by the trial court from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision by this Court.

The right to assistance of counsel implies the right to consult, confer, and communicate with counsel freely and fully. To have deprived petitioner of this right suddenly and without warning midway through the trial was a clear and patent denial of his Constitutional right. It is significant that thorough research has failed to disclose a similar instance of the severing of communication between a defendant and his counsel by incarceration during the progress of the trial. Close in principle and persuasive of petitioner's position is *United States v. Venuto*, 182 F. 2d 519 (C.A. 3d Cir. 1950) in which during the trial of the action the defendant was instructed not to discuss the case during an overnight recess. He and his counsel were required to bind themselves not to consult together under threat that otherwise the court would revoke defendant's bail and commit him to jail incommunicado to insure that there would be no such consultation. At 182 F. 2d 521-522 the court stated:

> "(2) We recognize the necessity for reposing in a trial judge a reasonable discretion in the matter of

restricting persons in the court room so that proceedings may be conducted in an orderly manner; but, as announced in *Glasser v. United States*, 315 U. S. 60, 71, 62 S. Ct. 457, 465, 86 L. Ed. 680: 'Upon the trial judge rests the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused.'".

(3) To deprive an accused defendant and his counsel of the right to consult with each other during an eighteen hour court recess was most certainly deprivation of the defendant's constitutional right to consult counsel at all stages of the proceeding. We can find no justification for imposing a restriction of silence between accused and counsel during a trial recess. We reject the Government contention that defendant and his counsel must prove affirmatively the exact prejudice produced by this injunction in a federal prosecution. Not only would this require them to disclose what would have been privileged communication between attorney and client but as stated in Glasser v. United States, supra, 315 U. S. at page 76, 62 S. Ct. at page 467: 'The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial. By restricting the right of consultation between this defendant and his counsel during court recesses, defendant was denied the right to have the assistance of counsel for his defense, as guaranteed by the Sixth Amendment to the Constitution. His objection on this ground and his motion for mistrial directed to the trial court were well founded. Accordingly, the conviction must be reversed and a new trial granted.'"

The summary incarceration of petitioner resulted in more than a mere hinderance to the defense of the action. Petitioner and counsel were advised that he would be confined at Waukesha, Wisconsin some eighteen miles from the place of trial and from the offices of petitioner and counsel. Such confinement would have worked a

hardship and would have deprived petitioner of assistance of counsel; but that was not done. Instead, the Marshal took petitioner to the Kenosha County jail, about forty miles from Milwaukee, without advising petitioner's counsel. This precluded all opportunity to examine, analyse, and discuss the testimony of the government's witnesses and to counter such testimony with documentary evidence.

It is significant that the sudden incarceration of petitioner did not occur until the third day of the trial and only after the government had rested and defendant's proof was being introduced. The suddenness of the confinement not only impeded the defense, but disrupted the plan and order of the defense which contemplated petitioner's freedom of activity. Had petitioner been confined from the outset other arrangements would have been made. Any interference with the established routine was bound to affect the conduct of the defense.

In *Glasser v. United States* (1942) 315 U. S. 60, 62 S. Ct. 457, 86 L. Ed. 680 at page 67 it is stated:

> "Admittedly the case against Glasser is not a strong one. The Government frankly concedes that the case with respect to Glasser 'depends in large part * * * upon a development and collocation of circumstances tending to sustain the inferences necessary to support the verdict'. This is significant in relation to Glasser's contention that he was deprived of the assistance of counsel contrary to the Sixth Amendment. In all cases the constitutional safeguards are to be jealously preserved for the benefit of the accused, but especially is this true where the scales of justice may be delicately poised between guilt and innocence. Then error, which under some circumstances would not be ground for reversal, cannot be brushed aside as immaterial since there is a real chance that it might have provided the slight impetus which swung the scales toward guilt."

Had petitioner been in custody at the commencement of the trial appropriate provisions would have been made to insure the conduct of the defense. So too, had there been a slightest apprehension of confinement from mid-trial on, similar provisions could have been made. It was the suddenness of the unexpected confinement in addition to the change of place of confinement which embarrassed and interfered with the defense of petitioner. Time, distance and curtailment of communication so prejudiced the defense of appellant as to infect the subsequent course of the trial with an absence of the fundamental fairness essential to the very concept of justice. (To paraphrase the verbiage in the decisions of the Supreme Court of the United States in *Crooker v. State of California* (1958) 357 U. S. 433, 439, 78 S. Ct. 1287, 2L. Ed. 2d 1448 and *Lisenba v. People* (1941) 314 U. S. 219, 236, 62 S. Ct. 280, 86 L.Ed. 166.)

The trial court stressed its dependence upon circumstantial evidence (App. 482) in arriving at its finding that petitioner was guilty. It is obvious that any impairment of petitioner's freedom to produce such testimony and evidence necessarily prejudiced his defense. As the accused "requires the guiding hand of counsel at every step in the proceedings against him" *(Powell v. Alabama)* (1932) 287 U. S. 45, 69, 53 S. Ct. 55, 77 L. Ed. 158), so, too, does counsel depend upon the availability of the accused for consultation throughout the trial. The severance of the established intercourse between counsel and the petitioner at such a critical stage necessarily tended to prejudice the cause of the petitioner.

Under the circumstances present herein the court below was required to speculate with respect the effect of the departure from the accepted and usual course of judicial proceedings and of petitioner's confinement upon the out-

come of the trial. In *Glasser v. United States* (1942) 315 U. S. 60, 62 S. Ct. 457, 86 L. Ed. 680 the Court stated (p. 76):

"* * * The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial * * *."

II

DUE PROCESS

Although the denial of assistance of counsel is inextricably bound with a denial of petitioner's right under Article V of the Bill of Rights to due process of law, petitioner presents as a second reason for granting a writ of certiorari a clear denial of due process. The power and authority to punish for contempt is to be found in Section 401, Title 18 U.S.C.A. That section provides:

"§401. Power of court

A court of the United States shall have power to punish by fine or imprisonment at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

* * * * * *

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command. June 25, 1948, c. 645, 62 Stat. 701."

The tardy return of petitioner with documentary evidence obtained from his office could hardly be called misbehavior in the presence of the court or so near thereto as to obstruct the administration of justice; nor could his conduct be properly denominated disobedience or resist-

ance to any lawful writ, process, order, rule, decree or command of the court. It is significant that no explanation was entertained by the Court (App. 348, 349).

The method employed the trial judge in summarily punishing the defendant for the delay of the proceedings was contrary to and in violation to the Rules of Criminal Procedure. The pertinent provision is as follows:

"Rule 42. Criminal Contempt.

(a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment."

In *Sacher v. United States*, 343 U. S. 1, 72 S. Ct. 451, 96 L. Ed. 717 (1952), the court said (pp. 454-455):

* * * * *

"Summary punishment always, and rightly, is regarded with disfavor and, if imposed in passion or pettiness, brings discredit to a court as certainly as the conduct it penalizes. But the very practical reasons which have led every system of law to vest a contempt power in one who presides over judicial proceedings also are the reasons which account for it being made summary. Our criminal processes are adversary in nature and rely upon the self-interest of the litigants and counsel for full and adequate development of their respective cases. The nature of the proceedings presupposes, or at least stimulates, zeal in the opposing lawyers. But their strife can pervert as well as aid the judicial process unless it is supervised and controlled by a neutral judge representing the overriding social interest in impartial justice and with power to curb both adversaries. The rights and immunities of accused persons would be exposed to serious and obvious abuse if the trial bench did not possess and frequently exert power to curb prejudicial and excessive zeal of prosecutors. The interests of society in the preservation of courtroom control by the judges are no more to be frustrated through unchecked improprieties by defenders."

* * * * *

In *Widger v. United States* (C. A. La. 1957) 244 F 2d 103, the Court stated (pp. 106-107):

* * * * *

"Moreover, we do not think the proceedings in the Court below were conducted in obedience to the requirements of Rule 42 (a). By its terms, a criminal contempt may 'be punished summarily' only 'if the judge certifies' that he witnessed the alleged contemptuous conduct and that it was committed in his actual presence. The rule further provides that the

order must 'recite the facts.' This record contains no certificate at all by the judge and the order does not recite any fact but merely the conclusions of the Court.

This rule providing for punishment of contempts summarily must be given a 'narrow construction' providing, as it does, for punishment without affording the accused 'the normal safeguards surrounding criminal prosecutions'; it being plain from the history of contempt procedures that the courts and congress have demonstrated a definite 'plan to limit the contempt power to " 'the least possible power adequate to the end proposed' ".' It is, therefore, essential that courts proceeding summarily 'must be meticulously careful to observe * * * procedural * * * safeguards.' While it appears from the record as a whole that the contemptuous conduct was in the presence of the Court, no certificate was signed by the Judge as required by the rule, and the remaining portions of the record can be considered only as assisting the Court in construing the terms of the certificate."

* * * * *

It is respectfully submitted that the trial judge not only acted without any certificate of contempt required by Rule 42 (a) of the Rules of Criminal Procedure, but acted without sufficient cause or provocation and in clear violation of the Constitutional right of petitioner. This error so affects the trial below that the judgment of conviction is rendered fatally suspect.

In *In Re Murchison* (1955) 349 U. S. 133, 75 S. Ct. 623, 99 L. ed 942 this Court stated (p. 136):

"(3-6) A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can

be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'Every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' Tumey v. State of Ohio, 273 U. S. 510, 532, 47 S. Ct. 437, 444, 71 L. Ed. 749. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' Offutt v. United States, 348 U. S. 11, 14, 75 S. Ct. 11, 13."

In *In Re Oliver* (1948) 333 U. S. 257, 68 S. Ct. 499, 92 L. ed 682 this Court stated (pp. 274-275):

"That the holding in the Terry case is not to be considered as an unlimited abandonment of the basic due process procedural safeguards, even in contempt cases, was spelled out with emphatic language in Cooke v. United States, 267 U. S. 517, 45 S. Ct. 390, 69 L. Ed. 767, a contempt case arising in a federal district court. There it was pointed out that for a court to exercise the extraordinary but narrowly limited power to punish for contempt without adequate notice and opportunity to be heard, the court-disturbing misconduct must not only occur in the court's immediate presence, but that the judge must have personal knowledge of it acquired by his own observation of the contemptuous conduct. This Court said that knowledge acquired from the testimony of others, or even from the confession of the accused, would not justify conviction without a trial in which there was an opportunity for defense. Furthermore, the Court explained the Terry rule as reaching only such conduct as 'created an open threat to the orderly pro-

cedure of the court and such a flagrant defiance of the person and presence of the judge before the public' that, if 'not instantly suppressed and punished, demoralization of the court's authority will follow.' Id., at page 536 of 267 U. S., at pages 394, 395 of 45 S. Ct."

It is respectfully submitted that petitioner was entitled to explain the reason for his delayed return to the court room; and if the explanation were insufficient cause for excuse, punishment could have been delayed until the conclusion of the trial. Due process required that petitioner have a fair trial before a fair tribunal; and to be deprived of Assistance of Counsel as a penalty for tardiness is to have deprived him of his liberty without due process of law.

CONCLUSION

The petitioner prays that this Court will grant a review herein upon the showing made with respect to his having been deprived of Assistance of Counsel and having been deprived of his liberty without due process of law. Tardy as petitioner was there was nothing in his conduct which evidenced any intention to obstruct the administration of justice. He was confined without sufficient cause or provocation and without being heard, and he was punished by denial of his Constitutional rights.

Respectfully submitted,

RAY T. McCANN,
RICHARD A. McDERMOTT
152 W. Wisconsin Avenue
Milwaukee, Wisconsin.
Counsel for Petitioner